

IMPACT STATEMENT

Legislation title: Adopt the Community Equity and Inclusion Plan for all City of Portland public improvement contracts that utilize alternative contracting methods and have estimated contract values of \$10 million to \$25 million; and utilize the modified Community Benefits Agreement for public improvement contracts with estimated contract values in excess of \$25 million. (Resolution)

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Purpose of proposed legislation and background information:

The creation of the Community Equity and Inclusion Plan (CEIP) began as a conversation amongst various bureaus of the City who actively and regularly engage in construction projects. During these conversations, it became clear that there was inconsistency across bureaus as to the equity efforts required for different construction contracts and that an inordinate amount of time was being spent on negotiating different equity plans. Although a draft model Community Benefits Agreement (CBA) was approved in 2012, the resolution requiring its consideration provided little guidance to bureaus on when such an agreement was appropriate and due to legal concerns, it was determined that the CBA could not be used as a blanket policy. As such, an effort was undertaken to align all of the bureaus under a central, single policy that would withstand legal scrutiny.

Thereafter, a workgroup was formed to review the most recent equity plans on City projects and to compile a list of provisions that were similar or identical across those plans. The equity plans reviewed included the model CBA, the modified CBAs used on the two pilot projects, Park's Community Benefit Plan (CBP), the Washington Park Reservoirs Improvements CBP, the Portland Building Equity, Inclusion and Diversity Plan, and the Subcontractor Equity Program. Using these equity plans as the template, the workgroup created the draft CEIP using commonalities from the various plans. In addition, using information from the evaluations on the two CBA pilot projects as well as feedback obtained from community members, the draft CEIP also included additional provisions that addressed issues identified in the pilot project evaluations and updates that were generally responsive to public feedback. Although the draft CEIP was reorganized and the language revised to provide greater clarity in construction contracts, the substance of many components of the various equity plans, including many parts of the model CBA, remained unchanged.

The purpose of creating the CEIP is to have a single, consistent plan that is used on all applicable construction projects City-wide. This will enable quicker procurements and align the expectations of the contractors who work on City projects. The goal of the CEIP is to increase the utilization of women and minority workers on City construction contracts and through the use of Disadvantaged Women-Owned Business Enterprises (WBE) and Minority-Owned Business Enterprises (MBE) as subcontractors. The mechanism to achieve this goal is through

prescriptive, required equity efforts which should enhance opportunities and increase the retention of women and minorities on City projects. The utilization of aspirational, disaggregated WBE and MBE goals is designed to encourage and better ensure increased utilization and to track whether these efforts are actually achieving increased diversity on City projects.

The resolution also adopts the modified Community Benefit Agreement (CBA) that was used on two Portland Water Bureau Projects and has further updated the language. The modified CBA will be used on public improvement projects with contracts in excess of \$25 million. These will be implemented on a project by project basis.

Along with the resolution to adopt the CEIP, Council will also be voting on a sister resolution to proceed with forming the Community Opportunities and Enhancements Fund, which entails a percentage set aside from all City public improvement construction contracts (not just those subject to the CEIP) to be used towards capacity building and technical assistance, amongst other things. In addition to these two resolutions, a third resolution will be presented, which will direct the development and implementation of a process in which to examine the project delivery selection process for construction services contracts.

Financial and budgetary impacts:

The Community Equity and Inclusion Plan (CEIP) will be applied to public improvement contracts with contract values totaling \$10 million to \$ 25 million using alternative contracting methods. For projects in excess of \$25 million, the modified CBA will be implemented.

Although the costs to each bureau for administering the Plans have not been calculated, there are costs in terms of staff time, outreach and recruitment activities and oversight and management. The costs should result in the achievement of goals and increase the number of underserved and underrepresented communities trained and ready to work on projects. This social benefit is worth the costs to bureaus for administering the Plan. Having a consistent plan to apply, rather than needing to negotiate separate Plans on a project-by-project basis, will result in efficiencies for bureaus, for contractors, and for community stakeholders.

There will be staffing costs for the Procurement Services Division to support and staff the Community Equity and Inclusion Committee (CEIC) and provide compliance on the contracts.

Community impacts and community involvement:

As part of the drafting process, once the bureaus resolved all internal questions on the provisions in the draft CEIP, the document was passed along to the Equitable Contracting and Purchasing Commission (ECPC) for their review and comment and a subsequent meeting was scheduled to discuss their input. After the ECPC provided feedback, the draft CEIP (revised to include ECPC comments) was then circulated to community stakeholder groups who were identified as having interest in social equity efforts of the City, and those who were involved in drafting the original model CBA. The draft CEIP was disseminated to 44 different groups. Dante James, Director of the Office of Equity and Human Rights and Tiffani Penson, Minority Evaluator Program and Supplier Diversity Officer of Procurement Services, visited personally with 23 groups to discuss the draft CEIP and the process for providing feedback, including some groups who represented

multiple organizations or individuals. Comments were received from 26 different groups, organizations, and individuals. Those comments were reviewed and discussed by the City workgroup. Where agreed upon and where feasible, the draft CEIP was revised to be responsive to those comments.

The City workgroup shared a table summarizing all the comments received and posted the final version on April 3 along with a “track changes” version that allowed stakeholders to easily identify what had changed from the version shared with the community in October.

The CEIP is the most robust equity plan that the City has ever undertaken. Special considerations were taken into account to minimize the likelihood of legal challenges to the CEIP and to place the City in the best position should the legality of the CEIP be challenged. Because a strong, consistent and continuous equity plan is the goal, preventing the impact of a legal challenge (which could result in temporary or permanent revocation of the CEIP) was a primary consideration in whether some community stakeholder groups’ suggestions were feasible.

One issue of particular significance was how to incorporate the signatory component of the pilot CBAs, which some stakeholders felt was crucial for the engagement of stakeholder groups who have a vested interest in the success of the projects and the communities it seeks to address. After reviewing feedback and considering several options, an ancillary agreement – the Community Equity and Inclusion Partnership Agreement - was created to serve as the signatory document to the CEIP. While the scope of the signatory document to the CEIP is narrower than in the pilot CBA, it correctly identifies the obligations appropriate for the stakeholder groups to undertake, while keeping separate the contractual relationship between the City and the Prime Contractor. This mechanism was designed to address concerns voiced by stakeholder groups who maintained that a contractual relationship was required for full participation, while simultaneously addressing concerns expressed by contractors and City project managers regarding the impact of multiple parties to the contract and confusion around obligations and enforcement abilities.

Further discussions with stakeholders have resulted in the proposed adoption of the modified CBA on contracts in excess of \$25 million. There is a recognition by the community that the two modified CBAs implemented on two Portland Water Bureau Projects were successful in terms of supporting meeting the contracting goals set for the project. A CBA will be implemented on future City projects on a project by project basis for those projects meeting the dollar threshold.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES:** Please complete the information below.
 NO: Skip this section

Impact Statement for Requested Council Action

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount